

Hanes Dye and Finishing Company and Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 11-CA-9562

April 21, 1981

DECISION AND ORDER

Upon a charge filed on November 28, 1980, by Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Hanes Dye and Finishing Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 11, issued a complaint on December 8, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on November 5, 1980, following a Board election in Case 11-RC-4719, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about November 13, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. Subsequently, Respondent filed an answer to the complaint admitting in part, and denying in part, the allegations in the complaint, submitting affirmative defenses, and requesting that the complaint be dismissed in its entirety.

On January 7, 1981, counsel for the General Counsel filed directly with the Board a motion to strike portions of Respondent's answer and to strike Respondent's first and second affirmative defenses to the complaint and notice of hearing and Motion for Summary Judgment. Subsequently, on

January 9, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent asserts as affirmative defenses that the complaint fails to state a claim upon which relief can be granted and that it has not engaged in any unfair labor practices as alleged in the complaint. Nonetheless, Respondent admits all of the operative factual allegations of the complaint except for its denial that the Union was properly certified and that the Union is the exclusive bargaining representative of its employees in the unit described below. Apparently, based on these denials, Respondent also denies the conclusionary averments of the complaint that it has violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union. In its response to the Notice To Show Cause, Respondent attacks the Union's certification on the basis of one of its objections to the election in the underlying representation proceeding.² Respondent contends that the Union was not properly certified because, contrary to *N.L.R.B. v. Savair Manufacturing Co.*, 414 U.S. 270 (1973), union officials and prounion employees told the employees that, if they signed authorization cards prior to the election, they would not have to pay an initiation fee. Respondent further contends that the Hearing Officer erred at the hearing on Objection 5 by refusing to permit Respondent to put evidence into the record which would have established that the prounion employees who altered the statements in question were agents of the Union. Respondent further contends that the Board erred in denying Respondent's motion to reopen the record and Respondent's motion for reconsideration of the denial of its motion to reopen the record to adduce evidence of the agency status of the prounion employees.

Review of the record herein, including the record in Case 11-RC-4719, reveals that, pursuant

¹ Official notice is taken of the record in the representation proceeding, Case 11-RC-4719, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

² Objection 5 on which Respondent attacks the Union's certification reads as follows:

During the course of the union campaign, supporters of the union solicited other employees to sign authorization cards by threatening employees that the union would fine them \$100 if the Teamsters won the election and the employee tried to join the union. These threats were coercive in nature and interfered with the rights of employees guaranteed by the National Labor Relations Act.

to a Stipulation for Certification Upon Consent Election, an election was conducted on August 29 and 30, 1979, which resulted in a vote of 204 votes for, and 161 against, the Union, with 1 challenged ballot which was insufficient to affect the results of the election. Thereafter, on September 7, 1979, Respondent filed timely objections to conduct affecting the results of the election. On November 21, 1979, the Regional Director issued a Report on Objections in which he recommended to the Board that Respondent's Objections 1, 2, 3, 4, 6, 7, 8, and 9 be overruled and that a hearing be held to resolve the issue under Objection 5 as to whether union organizer R. W. Brown made improper waivers of initiation fees under *N.L.R.B. v. Savair Manufacturing Co., supra*. On February 1, 1980, the Board issued a decision and order directing hearing in which the Board adopted the findings and recommendations of the Regional Director and ordered that a hearing be held. Pursuant thereto, on March 5 and 6, 1980, a hearing was held before Hearing Officer Beverly Campbell.

On March 17, 1980, Respondent filed with the Board a motion to reopen the record on the grounds that before the hearing it learned of new evidence which allegedly was previously unavailable to it and which allegedly would establish an agency relationship between some of the employees and the Union. The Union filed an opposition to the motion. On May 27, 1980, the Board issued an order denying the motion on the ground that Respondent had failed to show that the evidence was previously unavailable with the exercise of due diligence.

On June 16, 1980, Respondent filed with the Board a motion for reconsideration of the denial of its motion to reopen the record in which it contended that it did exercise due diligence during its investigation of its objections; that, under the circumstances herein, purely technical rules of evidence are not controlling in a representation case; that the Board had a duty to consider all evidence, whenever discovered, so as to maintain laboratory conditions for the election held pursuant to Section 9(c) of the Act; and further that its motion was nothing more than an effort to conform the pleadings to the record within the meaning of Rule 15(b) of the Federal Rules of Civil Procedure. The Union filed an opposition to the motion.

On June 27, 1980, while awaiting disposition of Respondent's motion for reconsideration by the Board, the Hearing Officer issued her report in which she recommended that Respondent's Objection 5 be overruled in its entirety and that the Union be certified as the exclusive representative of the employees.

On August 4, 1980, the Board issued an order denying Respondent's motion for reconsideration. The Board reiterated that the evidence Respondent had sought to present had not been shown to be previously unavailable with the exercise of due diligence. The Board further ruled that, even if it were to consider the issue of agency raised in the motion, it would find the evidence to be adduced insufficient to warrant a hearing.

Respondent filed timely exceptions to the Hearing Officer's report reiterating, *inter alia*, that an agency relationship existed between the prounion employees and the Union and that it was not given an opportunity to present evidence bearing on this issue at the hearing. On November 5, 1980, the Board issued its Decision and Certification of Representative in which it adopted the Regional Director's findings and recommendations and certified the Union as the collective-bargaining representative of Respondent's employees.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.⁴

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a North Carolina corporation with a plant in Winston-Salem, North Carolina, is engaged in the dyeing and finishing of textiles. During the past 12 months, a period representative of all times material herein, Respondent received goods and materials at its Winston-Salem, North Carolina, plant from points directly outside the

³ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

⁴ In view of the result herein, we find it unnecessary to rule on the General Counsel's motion to strike Respondent's denial of pars. 9, 10, 13, 14, and 15 and Respondent's first and second affirmative defenses. *Peaches Records & Tapes, Inc.*, 248 NLRB 517, 518, fn. 6 (1980).

State of North Carolina valued in excess of \$50,000. During the past 12 months, a period representative of all times material herein, Respondent, from its Winston-Salem, North Carolina, plant, shipped directly to points outside the State of North Carolina products valued in excess of \$50,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed at the Employer's Winston-Salem, North Carolina, plant, including lab technician, lab assistant in the Lab Department; remnant folder, merchandise assistant, machine operator merchandise, chief merchandiser in the Merchandise Department; mill supplyman, chief operator, receiving clerk in the Purchasing Department; department clerk, electrician, pipefitter, machinist, mechanic, carpenter/painter, maintenance person, yard man, janitor, sweeping machine operator, frame cleaner, stock keeper, fireman, boiler room helper, watchmen, energy department clerk in the Maintenance Department; winder operator, hooker folder, slitter operator, wrapping machine operator, winder supply, department clerk, lift truck operator, sweeper, carton lister, label & ticket maker, stacker operator, strapping machine operator, sample folder & headend clerk, cloth shader, utility, packing sheet clerk, carton packer, sample winder/quality control inspector, packer invoicer, packer invoicer helper, lot checker in the Putup & Packing Department; lift truck operator, utility, checking clerk, sidewinder operator, department clerk, stenciller/roll

wrapper in the Shipping Warehouse; process planners in Central Scheduling Department; finish range operator I and II, finish range inspector I and II, calender operator, schreiner calender operator, napper operator, sprinkler operator, utility, sweeper, calender inspector, size/weigher, size mixer, stacker operator, relief person, finishing range tender in the Finishing Department; jig operator, dye range operator, washbox tender, dye range inspector, roll winder, backfill operator, backfill inspector, utility, department clerk, sweeper, dye weigher/mixer, sizeweigher, cold bleach operator, relief person in the Dye Department; sewing machine operator, singeing machine operator, unwinder operator, washer operator, bleach inspector, layout line operator, layout helper, utility, department clerk, lift truck operator, lift truck indexer in the Greige & Bleach Department; lift truck operator, checking clerk, lift truck indexer in the Receiving Warehouse; and summer employees who were employed during the payroll period ending June 16, 1979; *EXCLUDING* all office clerical employees, professional employees, technical employees, managerial employees, temporary employees, guards and supervisors as defined in the Act.

2. The certification

On August 29 and 30, 1979, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 11, designated the Union as their representative for the purpose of collective-bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on November 5, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about November 10, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about November 13, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective-bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since November 13, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Hanes Dye and Finishing Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed at the Employer's Winston-Salem, North Carolina, plant, including lab technician, lab assistant in the Lab Department; remnant folder, merchandise assistant, machine operator merchandise, chief merchandiser in the Merchandise Department; mill supplyman, chief operator, receiving clerk in the Purchasing Department; department clerk, electrician, pipefitter, machinist, mechanic, carpenter/painter, maintenance person, yard man, janitor, sweeping machine operator, frame cleaner, stock keeper, fireman, boiler room helper, watchmen, energy department clerk in the Maintenance Department; winder operator, hooker folder, slitter operator, wrapping machine operator, winder supply, department clerk, lift truck operator, sweeper, carton lister, label & ticket maker, stacker operator, strapping machine operator, sample folder & headend clerk, cloth shader, utility, packing sheet clerk, carton packer, sample winder/quality control inspector, packer invoicer, packer invoicer helper, lot checker in the Putup & Packing Department; lift truck operator, utility, checking clerk, sidewinder operator, department clerk, stenciller/roll wrapper in the Shipping Warehouse; process planners in Central Scheduling Department; finish range operator I and II, finish range inspector I and II, calender operator, schreiner calender operator, napper operator, sprinkler operator, utility, sweeper, calender inspector, size/weigher, size mixer, stacker operator, relief person, finishing range tender in the Finishing Department; jig operator, dye range operator, wash-box tender, dye range inspector, roll winder, backfill operator, backfill inspector, utility, department clerk, sweeper, dye weigher/mixer, sizeweigher, cold bleach operator, relief person in the Dye Department; sewing machine operator, singeing machine operator, unwinder operator, washer operator, bleach inspector, layout line operator, layout helper, utility, department clerk, lift truck operator, lift truck indexer in the Greige & Bleach Department; lift truck operator, checking clerk, lift truck indexer in the Receiving Warehouse; and summer employees who were employed during the payroll period ending June 16, 1979; *EXCLUDING* all office clerical employees, professional employees, technical employees, managerial employees, temporary employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since November 5, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collec-

tive-bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about November 13, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Hanes Dye and Finishing Company, Winston-Salem, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed at the Employer's Winston-Salem, North Carolina, plant, including lab technician, lab assistant in the Lab Department; remnant folder, merchandise assistant, machine operator merchandise, chief merchandiser in the Merchandise Department; mill supplyman, chief operator, receiving clerk in the Purchasing Department; department clerk, electrician, pipefitter, machinist, mechanic, carpenter/painter, maintenance person, yard man, janitor, sweeping machine operator, frame cleaner, stock keeper, fireman, boiler room helper, watchmen, energy department clerk in the Maintenance Department; winder operator, hooker folder, slitter operator, wrapping machine operator, winder supply, department clerk, lift truck operator, sweeper, carton lister, label & ticket maker, stacker operator,

strapping machine operator, sample folder & headend clerk, cloth shader, utility, packing sheet clerk, carton packer, sample winder/quality control inspector, packer invoicer, packer invoicer helper, lot checker in the Putup & Packing Department; lift truck operator, utility, checking clerk, sidewinder operator, department clerk, stenciller/roll wrapper in the Shipping Warehouse; process planners in Central Scheduling Department; finish range operator I and II, finish range inspector I and II, calender operator, schreiner calender operator, napper operator, sprinkler operator, utility, sweeper, calender inspector, size/weigher, size mixer, stacker operator, relief person, finishing range tender in the Finishing Department; jig operator, dye range operator, washbox tender, dye range inspector, roll winder, backfill operator, backfill inspector, utility, department clerk, sweeper, dye weigher/mixer, sizeweigher, cold bleach operator, relief person in the Dye Department; sewing machine operator, singeing machine operator, unwinder operator, washer operator, bleach inspector, layout line operator, layout helper, utility, department clerk, lift truck operator, lift truck indexer in the Greige & Bleach Department; lift truck operator, checking clerk, lift truck indexer in the Receiving Warehouse; and summer employees who were employed during the payroll period ending June 16, 1979; *EXCLUDING* all office clerical employees, professional employees, technical employees, managerial employees, temporary employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant located at Winston-Salem, North Carolina, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on

⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

forms provided by the Regional Director for Region 11, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed at the Employer's Winston-Salem, North Carolina, plant, including lab technician, lab assistant in the Lab Department; remnant folder, merchandise assistant, machine operator merchandise, chief merchant

diser in the Merchandise Department; mill supplyman, chief operator, receiving clerk in the Purchasing Department; department clerk, electrician, pipefitter, machinist, mechanic, carpenter/painter, maintenance person, yard man, janitor, sweeping machine operator, frame cleaner, stock keeper, fireman, boiler room helper, watchmen, energy department clerk in the Maintenance Department; winder operator, hooker folder, slitter operator, wrapping machine operator, winder supply, department clerk, lift truck operator, sweeper, carton lister, label & ticket maker, stacker operator, strapping machine operator, sample folder & headend clerk, cloth shader, utility, packing sheet clerk, carton packer, sample winder/quality control inspector, packer invoicer, packer invoicer helper, lot checker in the Putup & Packing Department; lift truck operator, utility, checking clerk, sidewinder operator, department clerk, stenciller/roll wrapper in the Shipping Warehouse; process planners in Central Scheduling Department; finish range operator I and II, finish range inspector I and II, calender operator, schreiner calender operator, napper operator, sprinkler operator, utility, sweeper, calender inspector, size/weigher, size mixer, stacker operator, relief person, finishing range tender in the Finishing Department; jig operator, dye range operator, washbox tender, dye range inspector, roll winder, backfill operator, backfill inspector, utility, department clerk, sweeper, dye weigher/mixer, sizeweigher, cold bleach operator, relief person in the Dye Department; sewing machine operator, singeing machine operator, unwinder operator, washer operator, bleach inspector, layout line operator, layout helper, utility, department clerk, lift truck operator, lift truck indexer in the Greige & Bleach Department; lift truck operator, checking clerk, lift truck indexer in the Receiving Warehouse; and summer employees who were employed during the payroll period ending June 16, 1979; *EXCLUDING* all office clerical employees, professional employees, technical employees, managerial employees, temporary employees, guards and supervisors as defined in the Act.

HANES DYE AND FINISHING COMPANY